

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
3 Civil No. 11-6377(JLL)

4 - - - - -X  
5 SHARON L. DANQUAH, et al., : TRANSCRIPT OF  
6 Plaintiffs, : PROCEEDINGS  
7 -vs- : December 22, 2011  
8 UNIVERSITY OF MEDICINE AND :  
9 DENTISTRY OF NEW JERSEY (UMDNJ):  
10 et al., :  
11 Defendants. : Newark, New Jersey  
12 - - - - -X

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14  
15 B E F O R E:

16 THE HONORABLE JOSE L. LINARES,  
17 UNITED STATES DISTRICT COURT JUDGE  
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20 Pursuant to Section 753 Title 28 United States Code, the  
21 following transcript is certified to be an accurate record  
22 as taken stenographically in the above-entitled proceedings.

23 s/Phyllis T. Lewis, CCR, CRCR

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1 THE CLERK: All rise.

2 THE COURT: Thank you.

3 Please be seated.

4 Good afternoon.

5 I want to put a little bit of a procedural  
6 background on the record, but first let's get everyone's  
7 appearance on the record.

8 This is in the matter of Danquah versus University  
9 of Medicine and Dentistry of New Jersey, Civil Action No.  
10 11-6377.

11 Counsel, your appearances for the record, please.

12 MR. STRATIS: Good afternoon, your Honor.

13 Demetrios Stratis on behalf of the plaintiffs.

14 Seated to my right is Matthew Bowman, who is  
15 admitted in this matter pro hac vice. Also seated to my  
16 right is Catherine Foster, who has also been admitted last  
17 week by Judge Hammer's order, and also part of our  
18 litigation team is Steve Aden.

19 THE COURT: Good afternoon.

20 Thank you.

21 MR. DEUTSCH: May it please the Court, Edward  
22 Deutsch from Mc Elroy, Deutsch, Mulvaney & Carpenter, John  
23 Peirano from the same firm, and James Patterson from the  
24 same firm.

25 THE COURT: Good afternoon, gentlemen.

1           By way of background, the plaintiffs filed a  
2       complaint in this matter back on October 31st, 2011. In  
3       that complaint it alleged three causes of action, a  
4       violation of the church amendment and Section 1983, a  
5       violation of the 14th Amendment of the United States  
6       Constitution, and a violation of the New Jersey law, the  
7       conscience statute. They also filed an application for a  
8       temporary restraining order, as well as a preliminary  
9       injunction.

10           As a result of certain communications from the  
11       defendants' counsel with regard to what the hospital was  
12       willing to do in the interim and based on the  
13       representations made therein, I issued a temporary  
14       restraining order, and I scheduled this matter for a hearing  
15       today. Originally the hearing was scheduled for another  
16       date, but then it was adjourned until today. I think the  
17       initial return date was back on November 18th.

18           We were here today ready to proceed to the  
19       arguments in this matter, but I thought it would be in  
20       everyone's best interest, both of the plaintiff nurses, as  
21       well as the hospital, that I have a conversation with  
22       counsel in an attempt to reach an amicable resolution that  
23       would address both the concerns of the plaintiffs as well as  
24       the concerns of the hospital.

25           The Court is well aware and cognizant of the

1 plaintiffs' religious beliefs and how strongly they feel  
2 about this case and is equally aware of the concerns of the  
3 hospital, the mission of the hospital of providing  
4 appropriate medical care and the desire to keep providing  
5 adequate medical care to our community, so both things had  
6 to be balanced. I thought it best before I had to make a  
7 decision that forced me to make a ruling one way or the  
8 other, that I would try to accommodate that the best I could  
9 through engaging the parties in a dialog.

10 After a lengthy dialog, and I must say through a  
11 lot of cooperation from the hospital and plaintiffs'  
12 counsel, I think we have reached a situation where an  
13 agreement has been arrived at. Because of the how important  
14 this matter is to the parties, we are going to memorialize  
15 the agreement on the record today, and I am going to retain  
16 jurisdiction of this matter to ensure that the terms of the  
17 agreement are in fact followed.

18 Now, having said that, as I understand it, and I am  
19 going to have -- Mr. Deutsch, is it going to be you who is  
20 going to speak on behalf of the hospital?

21 MR. DEUTSCH: Yes, your Honor.

22 THE COURT: As I understand it, in an effort to  
23 amicably resolve this matter, the hospital is willing to --  
24 and, Mr. Bowman, I will give you an opportunity as well --

25 MR. BOWMAN: Okay.

1           THE COURT: -- is willing to allow the plaintiff  
2       nurses to stay in the same day surgery unit and not have to  
3       assist in any manner, and I am going to let you set forth  
4       what that means, in termination of pregnancy cases, with the  
5       exception of emergency situations, where it is a true  
6       emergency, and where there is no non-objecting medical  
7       personnel present when the emergency occurs, and even under  
8       those circumstances, the only involvement of the objecting  
9       plaintiffs would be to care for the patient until such time  
10      as a non-objecting person can get there to take over the  
11      care.

12           I thought that with that caveat, Mr. Bowman, and by  
13      that I mean the fact if there is a non-objecting person  
14      there, they have to do it, not your clients, and with the  
15      caveat that they only have to do it until such time as a  
16      non-objecting person gets there, and with the caveat that I  
17      am retaining jurisdiction to ameliorate any concerns you  
18      might have about what is not an emergency, that that was an  
19      appropriate resolution.

20           I know that the plaintiffs had some concerns with  
21      the issue of emergencies, you know, what exactly does that  
22      mean, and how that could be used.

23           I am convinced, and I am going to have Mr. Deutch  
24      make certain representations on the record, but I am  
25      convinced from the dialogue with both counsel, that it is

1 not the intent or the desire of the hospital to use this  
2 agreement in any way as a pretext to then come up with some  
3 kind of a non-emergency situation, call it an emergency, and  
4 have your clients have to get involved in the termination of  
5 pregnancy at some level.

6 Having said that, in any event, I am retaining  
7 jurisdiction in the event that you feel that that has truly  
8 happened.

9 What I am not going to do today, and I have said  
10 that to you, Mr. Bowman, and I think I said it to Mr.  
11 Deutsch as well, is to try to come up with a definition of  
12 all emergencies today or at any time, because I think that  
13 would be medically impossible. Emergencies come in many  
14 shapes and forms. You know, it could be a cardiac arrest  
15 situation, or it could be a cerebral hemorrhage. You could  
16 have someone fall off of a chair and break a leg. I can't  
17 even imagine, as I sit here today, how many I could name, so  
18 it would really be impossible.

19 It is also understood, as I view it from the  
20 agreement of the parties, that the mere act of bleeding at  
21 some level doesn't necessarily constitute an emergency. It  
22 is obvious to this Court that when a pregnancy is being  
23 terminated in the manner in which the papers indicate the  
24 procedure is done, there is to be expected some level of  
25 bleeding at some point, and not every bleeding constitutes

1 an emergency. However, I could see situations where it  
2 could be, but that is an issue for another day. That is my  
3 general understanding of what the agreement is.

4 I am now going to have Mr. Deutsch set forth on the  
5 record whether or not what I just said accurately  
6 encompasses the agreement and what the hospital is willing  
7 to do, and I want you to address the issue of staffing and  
8 anything else that you want to put on the record with regard  
9 to the potential pretextual emergencies and all of that,  
10 understanding that I am going to retain jurisdiction to make  
11 sure that the settlement hopefully gets carried forward as  
12 intended by the parties.

13 MR. DEUTSCH: Your Honor, may I have one moment,  
14 please?

15 THE COURT: You may.

16 (Counsel Confer)

17 MR. DEUTSCH: Thank you, your Honor.

18 I think you have very adequately set forth the  
19 agreement between the parties, between the hospital and Mr.  
20 Bowman's clients.

21 I represent to the Court that the hospital has no  
22 present -- no intention of using this agreement in any  
23 pretextual manner. They hired four additional nurses who  
24 are non-objecting, as I understand it, to help the  
25 situation, where the plaintiffs in this case do not have to



1 undertake any activities from checking people in, to taking  
2 vital signs, administering medication, or any other normal  
3 procedure relative to termination of pregnancy patients.

4 Your statement relative to emergencies is accurate.  
5 I think reasonable people in the medical profession will  
6 know what a real emergency is and will act accordingly.

7 The procedures take place, as I understand it, on  
8 Wednesdays and Fridays, and that the hospital is going to  
9 make its best efforts to have non-objecting people  
10 available, so that the non-availability issue can be as moot  
11 as it possibly can.

12 THE COURT: All right.

13 Mr. Bowman, did I accurately --

14 MR. DEUTSCH: I'm sorry, your Honor.

15 The other issue, your Honor, that we spoke of is  
16 that you are correct, the intention is to keep these  
17 plaintiffs in the same day surgery. In the future if there  
18 is any reason for movement, the hospital will abide by the  
19 letter in applying the union contract, that they are bound  
20 by it.

21 THE COURT: Mr. Bowman, did I accurately reflect  
22 the spirit and the letter of the agreement?

23 MR. BOWMAN: Your Honor, I had a couple of notes on  
24 that. I think that what you said is generally my  
25 understanding as well.

1           Our understanding is -- well, just at the outset,  
2           my clients have never taken the position that if they are  
3           walking by a room and a woman is in an emergent situation,  
4           that they are not going to take the necessary action to  
5           protect her.

6           The question is: On routine abortion cases, do  
7           they have to do duties.

8           That has always been the issue in the case.

9           Our understanding is that the agreement that we  
10          have come to today includes that the hospital would staff  
11          the abortion cases with willing nurses, that -- so, in other  
12          words, the hospital couldn't just say, "Well, we don't have  
13          enough staff today, so you are on the case, because it is  
14          emergency, we need staff," so that they would staff the  
15          cases.

16          At the same time they wouldn't transfer, not only  
17          transfer out my clients, but reduce their hours and say,  
18          "Well, because we hired these new nurses, now we have too  
19          many, and you can't work as many hours a week as you have  
20          been. We are going, you know, to change your duties and  
21          schedule," and all of these things that are adverse that  
22          we've proposed.

23          Part of the agreement is that as a result of my  
24          clients being not willing to work on abortion cases, that  
25          they are not going to suffer any of these adverse penalties.

1           THE COURT: Well, I think that the important words  
2           there were that as a result of this case. I am not going to  
3           today make a blanket ruling on how the hospital is going to  
4           run its personnel issues for years to come. I mean, your  
5           clients are part of a collective bargaining agreement, and  
6           they have rights reserved within that collective bargaining  
7           agreement. Obviously, if there is evidence that they are  
8           being somehow castigated in some form for having filing the  
9           lawsuit, that is a story for a different day.

10           But you are correct, my understanding, Mr. Deutsch,  
11           is that they will be allowed to stay, at least the present  
12           plan is that they will be allowed to stay as they were in  
13           the same day surgery unit with the only change really being  
14           that they don't have to participate in the termination of  
15           pregnancies at any level.

16           Is that correct?

17           MR. DEUTSCH: The present intention is to keep them  
18           in same day surgery, but in the future at some point, if  
19           things change, and staffing had to be changed years from  
20           now, sometime in the future, it would be done in accordance  
21           with the collective bargaining agreement.

22           I can't say that they will be in same day surgery  
23           for the next 20 years. It just can't happen --

24           THE COURT: Mr. Bowman, it would be impossible for  
25           me to police that.

1                   Now, the other concern, though, that Mr. Bowman  
2                   raised, and I think you said this, but I just wanted to  
3                   clarify it, you are going to staff the days when these  
4                   terminations of pregnancy are done with non-objecting  
5                   people, so that it is not the case that only objecting  
6                   people are there, and then by definition everything is an  
7                   emergency.

8                   MR. DEUTSCH: I think the best way to say it is  
9                   that the hospital is going to make the best efforts to have,  
10                  as Mr. Bowman said, the willing people or the non-objecting  
11                  people, the new hires and the remaining people who are not  
12                  objecting, best efforts to have those people available on  
13                  the days that these procedures take place to avoid the issue  
14                  of non-availability.

15                 THE COURT: All right.

16                 Anything else?

17                 MR. BOWMAN: Yes.

18                 And, your Honor, I think that that -- the point I  
19                 was making previously was so that we are in sort of a  
20                 different position than we were last week when Mr. Peirano  
21                 said that, well, once we put these four extra nurses in,  
22                 we have a surplus --

23                 THE COURT: That is not what is being said today.  
24                 That has changed as a result of frankly my input with Mr.  
25                 Deutsch and his input to his client and the conversations

1 that went back and forth with the hospital. They have  
2 changed I think their position to the position that I  
3 suggested this morning, and I think you had accepted it.

4 MR. BOWMAN: I just wanted to put it on the record,  
5 your Honor, to clarify that.

6 I think that your description of the emergency  
7 issue is basically consistent with ours. Medical  
8 professionals do know what a real emergency is. My clients  
9 are medical professionals, and the issue here is not I am  
10 going to do emergency abortions. There are no emergency  
11 abortions in the outpatient surgery unit. The issue is I'm  
12 walking by, there's nobody else available, and this woman is  
13 in need for, you know, whatever reason, it is a real  
14 emergency. My clients have never taken the position that I  
15 am not going to help the women.

16 The real question was: Are you going to be  
17 assigned to work on abortion cases, you are expected to work  
18 on abortion cases, and I think --

19 THE COURT: We have taken care of that with this  
20 agreement.

21 MR. BOWMAN: -- and with that, I think that we  
22 have -- I think we could have the understanding here, unless  
23 I stand corrected --

24 THE COURT: No. I don't have anything else.

25 What I am going to do is, and I think for your

1 clients' protection, as well as the protection of the  
2 hospital, so everyone is on the same page, as I said to both  
3 of you in my chambers, rather than have you go back and  
4 forth negotiating something in writing, especially because  
5 the emotions in this case have run so high, I am going to  
6 issue an order of settlement, which embodies the  
7 understanding of the parties, as I have just recited it.

8 I am going to indicate in there that the staffing  
9 concerns, as indicated by counsel, that they are going to  
10 have someone there.

11 I am going to indicate in there that the word  
12 "emergencies," as understood in the agreement, are true  
13 medical emergencies, and it is not going to be used as a  
14 pretext.

15 I am going to include in there that even in that  
16 situation, your clients only have to get involved in it in  
17 the absence of the non-objecting people, and then only until  
18 they show up.

19 I will keep jurisdiction, so in the event that that  
20 were to happen, or that your clients breached the agreement,  
21 or the hospital breached the agreement, that you then can  
22 come back to me and resolve it.

23 I think under the circumstances this is the best  
24 solution for everybody, and I want to thank both you and Mr.  
25 Deutch who are the ones that I dealt with. I am sure

1 everybody else contributed.

2 By the way, I guess you should put on the record,  
3 because you do have 12 clients, that you have the authority  
4 to enter into this agreement on behalf of all of your  
5 clients. I know that only two or three are here, and then  
6 you had to go to the hospital to meet with the rest of them  
7 at my request, so could you please indicate for the record  
8 that you have the authority to enter into this agreement on  
9 behalf of all of your clients?

10 MR. BOWMAN: Your Honor, I have spoken to each of  
11 the 12. As our understanding is represented here, they have  
12 agreed to that.

13 We have a lot of details in the agreement, and I  
14 don't mean to belabor the point, but I think it also -- I am  
15 not sure if in your most recent recital of what it would  
16 include, it included that there wouldn't be adverse actions  
17 taken against my clients on the basis of their objection, or  
18 that they wouldn't have their hours reduced and whatnot,  
19 with the recognition that this is not, you know, locking the  
20 hospital into what the same day surgery is going to be for  
21 the next 20 years. It's just a question of looking at the  
22 staffing, as we discussed it, and we are in a different  
23 position than we were last week, that that is also part of  
24 it.

25 When Mr. Deutch recited some of the things, among

1 all of the things that would not be required of working on  
2 cases, one thing that we did mention specifically was  
3 training to do any thereof, so in other words, the things  
4 that my clients wouldn't have to do on abortion cases, it is  
5 my understanding that by virtue of the fact, they wouldn't  
6 also have to go through training to do those things, and I  
7 wanted to put that on the record.

8 Certainly, if I am incorrect about that, maybe you  
9 can clarify it.

10 THE COURT: This is the day to clarify it.

11 MR. DEUTSCH: One second, your Honor.

12 (Counsel confer)

13 MR. BOWMAN: But I can say, if I didn't more  
14 specifically say it, that I have spoken with all 12 of my  
15 clients, and they all do agree with the agreement to the  
16 extent that I'm expressing our understanding of it.

17 THE COURT: Thank you.

18 MR. PEIRANO: Your Honor, may I respond on behalf  
19 of UMDNJ?

20 THE COURT: Yes.

21 MR. PEIRANO: Your Honor, with respect to the  
22 training, the training to actually perform abortions,  
23 obviously they do not have to do that. However, the duties  
24 that they are being relieved from include duties that are  
25 performed on other pre-op surgery patients and other post-op



1 surgery patients. So to the extent that that training is  
2 for all nurses without regard to whether it is abortions or  
3 not, if the hospital mandates that there be training for  
4 that, we are not saying that they wouldn't have to go  
5 through that training, Judge, for example, training on how  
6 to take vital signs. I mean, you have to take vital signs  
7 for every surgery. If they run training on that, they would  
8 be required to do that, Judge.

9 THE COURT: Training that is necessary for other  
10 medical procedures.

11 MR. PEIRANO: For all surgical -- that's absolutely  
12 correct, your Honor.

13 THE COURT: Mr. Bowman, I assume you have no  
14 objection to that.

15 MR. BOWMAN: That's right. We weren't suggesting  
16 that they wouldn't have to do the duties in themselves --

17 THE COURT: The duties of a nurse in general, but  
18 not specific duties dealing with termination of pregnancy,  
19 right?

20 MR. BOWMAN: Yes.

21 The way the training happened before was, we are  
22 actually taking you to an abortion patient, and here, do  
23 this, do that and the other thing.

24 No one -- you know, we are obviously not objecting  
25 to learning vital signs on a standard non-abortion patient,

1 or even to learning emergency care on that standard  
2 non-abortion patient. That is not what I was suggesting  
3 would be --

4 MR. PEIRANO: I just wanted that to be clear, and  
5 one other clarification, Judge --

6 THE COURT: That is the reason why I wanted to go  
7 on the record, because I wanted to clarify everything rather  
8 than have you guys do it back and forth through letters,  
9 which apparently hasn't been very fruitful in the past.

10 MR. PEIRANO: That's correct, Judge.

11 With respect to whether our position has changed as  
12 far as staffing from last week, I do not agree that it has  
13 changed measurably, your Honor.

14 Last week what our position was, if we hire four  
15 new people to come in, and the census goes down, when the  
16 census goes down, Judge, okay, there may not be a need for  
17 20 nurses. Somebody may be transferred. But if that  
18 occurs, Judge, it is all going to be under the position of  
19 the collective bargaining agreement. There is no present  
20 intention to do that, but we simply cannot predict the  
21 future, your Honor.

22 THE COURT: Counsel, I think we said that, and I  
23 don't want to create problems where there aren't any. I  
24 think Mr. Bowman understands that. His concern is that as a  
25 result of this case, you don't start taking adverse

1 employment action against his clients, right?

2 MR. BOWMAN: That's basically right, your Honor.

3 THE COURT: That's my understanding as well.

4 If you decide to transfer them later for other  
5 reasons --

6 MR. PEIRANO: We have no objection to that, your  
7 Honor.

8 MR. BOWMAN: The question we're raising is you look  
9 at the 20 nurses and you say, these new four will do  
10 abortions, and these 12 won't, so on that basis, on the  
11 basis of that distinction, some of the 12 go out, and the  
12 four stay in. That is where I understood us to be last  
13 week, and that's where I understand us not to be this week.

14 MR. PERIRANO: Judge, if something like that  
15 happens, that they believe is an adverse employment action,  
16 as a result of them engaging in protected activity, you are  
17 retaining jurisdiction, and it can be brought before the  
18 Court.

19 THE COURT: I agree, because it's like the  
20 definition of an emergency. We are not going to be sitting  
21 here today trying to figure out in the event that they do  
22 something, when they do it, is it going to be as a result of  
23 this case. I mean, I am going to retain jurisdiction, so  
24 that I can keep an eye on what is going on.

25 MR. BOWMAN: We are very glad you are doing that,

1       your Honor. For ten years there have been no situations  
2       which required my clients' involvement, so if we are going  
3       back to that basic situation, then we have no objection.

4               THE COURT: All right.

5               I want to thank both of you for working with the  
6       Court in the amicable resolution of this matter.

7               I will issue an order that will set forth the  
8       parameters of the agreement, as I understand it, and as you  
9       indicated that you understand it today, and that will be  
10      all.

11              I think that agreements like this in cases like  
12      this do not come about easily because of the emotions  
13      involved, and because any time you are dealing with a public  
14      entity, it is not as though you are dealing with a single  
15      client that you can get approval for things overnight.

16              There are procedures that entities like the  
17      hospital have to go through and responsibilities in their  
18      mission statement in terms of what they have to do, and  
19      there are also issues with regard to potential medical  
20      liability, if you leave things out like emergencies out of  
21      the equation, you know, potential medical malpractice claims  
22      and all other kinds of claims.

23              On the other hand, I understand the importance of  
24      this issue to your clients, and I wanted to see if there was  
25      a way to accommodate it, and I appreciate you talking to

1       your clients and getting everyone on the same page.

2               Mr. Deutsch, I appreciate the reasonableness in  
3       which the hospital handled this situation in reaching where  
4       we got today.

5               So with my thanks, this matter is now adjourned.

6               Thank you.

7               MR. DEUTSCH: Thank you, your Honor.

8               MR. PEIRANO: Thank you, your Honor.

9               MR. BOWMAN: Thank you, your Honor.

10              THE CLERK: All rise.

11              (Court adjourned.)